

Janet Napolitano
Governor



Marcia J. Busching
Chair

Kathleen S. Detrick
Ermila Jolley
Tracey Bardorf
Gary Scaramazzo
Commissioners

**State of Arizona
Citizens Clean Elections Commission**

1616 W Adams, Suite 110- Phoenix, Arizona 85007 - Tel (602) 364-3477 - Fax (602) 364-3487 - www.ccec.state.az.us

PROBABLE CAUSE RECOMMENDATION

To: Commissioners

From: L. Gene Lemon, External Investigative Consultant

Date: August 5, 2005

Subject: MUR # 04-0020

This shall affirm that I intend to proceed with my July 21, 2005, probable cause recommendation. Each of you and the Respondent has been furnished with a copy of my letter/brief which contains the recommendation, the Respondent has not filed any brief in response, and this completes the procedures specified by A.A.C. R2-20-214.

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July 21, 2005

Mr. David Gowan
2027 Santa Teresa Drive
Sierra Vista, AZ 85635

RE: CCEC File MUR No. 04-0020

Dear Mr. Gowan:

I am writing in reference to the Commission's investigation and reason to believe finding that you have violated A.R.S. Sec. 16-948(C), by failing to maintain petty cash accounts and by failing to directly pay or identify on your campaign finance reports the persons who provided goods or services to your 2004 campaign, and A.A.C. R2-20-111 and 703(A)(2), by failing to keep and retain records as required by the rules. Pursuant to A.A.C. R2-20-214 this letter shall serve as the brief setting forth my position on the legal and factual issues in the case and contains my recommendations that the Commission should find probable cause to believe that there has been a violation of A.R.S. Sec. 16-948(C). As the civil penalty for the violation, I will recommend that the Commission fix the amount at \$10,000.00 pursuant to A.R.S. Sec. 16-942(B).

I have reviewed the complaint, revised complaint, your responses, the report of Miller, Allen & Co. on its examination of your campaign account and records, and such other sources of information as I have deemed appropriate in formulating my recommendations. My findings are as follows:

Failing to Meet Books and Records Requirements

The auditors report found that for certain campaign committee bank deposits no supporting documentation was maintained, that bank account activity did not agree to amounts reported on the committee's campaign finance report, and that the committee did not retain copies of early contribution information as required. Our conversations and my investigation lead me to the conclusion that adequate information has been retained in electronic format and the amount of discrepancy is so small that further proceedings on these matters is not warranted. Accordingly, I will recommend that the Commission find no probable cause to believe violations of Commission rules have occurred with respect to this issue as were alleged.

Failure to Maintain Petty Cash Accounts

The auditors' report found that the Committee did not maintain any petty cash funds during the period the auditors reviewed. The Commission's reason to believe statement noted certain petty cash expenditures by the campaign. Our conversations and my investigation find that the campaign opened its petty cash accounts after the period reviewed by the auditors, and the expenditures were properly made in accordance with the Act. Accordingly, I will recommend that the Commission find no probable cause to believe any petty cash violation occurred.

Payment Directly to Person Providing Goods or Services

Participating candidates, or persons authorized by them, are required to pay monies from a participating candidate's campaign account directly to the person providing goods or services to the campaign and shall identify, on a report filed pursuant to article 1 of Arizona's campaign contributions and expenditures law, the full name and street address of the person and the nature of the goods and services and compensation for which payment has been made. A.R.S. Sec. 16-948(C).

My investigation has resulted in finding that your campaign wrote checks to Constantin Querard totaling over \$26,000, which is more than 70% of the entire spending by the committee. For this major part of the committee's expenditures the name and address of the person actually providing goods or services to your campaign, and the compensation that person received, is not disclosed – only the middleman is disclosed.

In your responses you have taken the position that Mr. Querard was your vendor and have asked if other candidates who have reported as you did have been the subject of Commission enforcement proceedings as you are. I find no merit in your claims, and I would refer you to Commission file nos. MUR 04-0025, MUR 04-0028/37, MUR 04-0029 and MUR 04-0048, among others, to satisfy you of the consistent, nonpartisan and determined position of the Commission that the information specified by the Act be reported.

Based upon the facts detailed above, I recommend that the Commission find probable cause to believe that a violation of A.R.S. Sec. 16-948(C) by your committee has occurred.

Civil Penalty

I recommend that the Commission make a finding that there is probable cause to believe that Respondent violated A.R.S. Sec. 16-948(C) by failing to identify and report vendors of goods and services to his campaign as required, make a finding that there is no probable cause to believe that the committee violated any other provisions of the Act or Commission rules, and issue an Order assessing a civil penalty in accordance with A.R.S. Sec. 16-942(B). Pursuant thereto, the civil penalty for a violation by or on behalf of any legislative candidate of any reporting requirement imposed by Chapter 6 of Title 16 shall be \$110.00 per day, resulting in a very large amount being now specified by the Act due to the passage of time and the respondent's failure to amend his campaign finance reports. R2-20-222 of the Commission's rules generally limits penalties for violation of the Act to \$10,000.00, and I find it appropriate to recommend use of that general rule in this matter. Accordingly, I will recommend a civil penalty

of \$10,000.00 for which the candidate and the candidate's campaign committee shall be jointly and severally responsible.

Briefing Procedures

Within five (5) days from receipt of this letter from the External Investigative Consultant, the Respondent may file a brief with the Commission setting forth the Respondent's position on the factual and legal issues of the case pursuant to A.C.C. R2-20-214(C). After reviewing the Respondent's brief, the External Investigative Consultant shall promptly advise the Commission in writing whether he intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

Sincerely,

L. Gene Lemon
External Investigative Consultant
Citizens Clean Elections Commission

Cc: Commissioners